LIEW SOON OI v. YAP FUI THONG & ANOR.; LIEW SECK CHONG v. YAP FUI THONG & ANOR.

[O. C. J. (Storr J.) October 9, 1955]

[J. B. — Civil Suit Nos. 3 & 4 of 1955]

Damages — Fatal Accidents Enactment (Johore) No. 99, ss. 3 and 5 — Vehicle driven with consent and permission of owner — Negligence by driver — Whether owner or driver liable to damages — Assessing damages.

These actions arose out of a collision between two motor cars SC 5973 and SC 81 on the Johore Causeway on May 29, 1954. The plaintiff in Civil Suit No. 3 of 1955 was the widow and administratrix of the driver of motor car SC 5973 who was killed by the collision, and brought the claim under the Fatal Accidents Enactment. The plaintiff in the other Suit was a son and administrator of the person sitting next to the deceased driver, who was also killed as a result of the collision, and brought the claim on behalf of the daughter of the deceased, aged 19. The defendants in both actions were the driver and owner respectively of motor car SC 81 at the time of the collision.

The learned Judge found as a fact that the first defendant was driving SC 81 with the consent and permission of the second defendant, the owner. The second defendant, apart from being the owner of the said car, appeared to have had no control over the car at all. There was no evidence whatever as to the first defendant being his servant or agent.

Held: (1) in the circumstances of the case the first defendant was liable in damages to the plaintiffs in both actions; (2) the claim in both actions as against the second defendant failed.

In assessing damages under the Fatal Accidents Enactment the starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum has to be taxed down by having due regard to uncertainties: for instance, that the widow might have again married and thus cease to be dependent, and other like matters of speculation and doubt. Davies v. Powell Duffryn Associated Collieries Ltd.(5) followed.

Cases referred to:—

(1) *Hiern v. Mill* 13 Ves. Jun. 119.

(2) *Cockerel v. Dickens* 13 E.R. 45.

(3) *Jervis v. Berridge* (1873) 2 Ch. App. 351.

(4) *London, Chatham & Dover Railway Co. v. South Eastern Railway Co.* (1892) 1 Ch. 120.

(5) *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) A.C. 601, 617.

ACTIONS for damages.

Chong Thutt Pitt for the plaintiffs.

N. L. Macassey for the defendants.

Storr J.: — These actions arose out of a collision between two motor cars SC 5973 and SC 81, on the Johore Causeway on 29th May, 1954.

The plaintiff in Civil Suit No. 3 of 1955 is the widow and administratrix of the driver of motor car SC 5973, one Cheong Ah See who was killed by the collision, and brings the claim under the Fatal Accidents Enactment (No. 99) Johore, on behalf of herself and the six children of the deceased.

In Civil Suit No. 4 of 1955 the plaintiff is a son and administrator of one Liew Kim Kee, the person sitting next to Cheong Ah See (decd.,) drive of SC 5973, who was also killed as a result of the collision, and brings the claim on behalf of the daughter of the deceased, Liew Kow Mooi, aged 19 (born on 27th February, 1934).

The defendants in both actions, which were tried together by agreement of Counsel, were the driver and owner respectively of SC 81 at the time of the collision.

Having considered the whole of the evidence as to the collision, I find as a fact that it was due to the negligence of the driver of SC 81 — the first defendant Yap Fui Thong — in driving at an excessive speed in the circumstances and not keeping a proper look-out when endeavouring to pass another car in front of him. The cause of the skid which made SC 81 swing round into a back skid was no doubt due to the sudden application of the brakes when the first defendant first saw SC 5973 in his endeavour to avoid a head-on collision. I accept the evidence of P.W. 4 (Cheong Yian Fatt), who, although only 15 years of age, gave his evidence in a very intelligent and straightforward manner. His version of the collision was obviously the correct one. I was unable to accept the evidence of the first defendant as to how the collision occurred. He was obviously driving too fast and without any apparent consideration to on-coming traffic.

The first defendant was driving SC 81 with the consent and permission of the second defendant, the owner. The first defendant is therefore liable in damages to the plaintiffs in both actions.

The second defendant, apart from being the owner of SC 81, appears to have had no control over the car at all and is therefore not liable in damages to the plaintiffs. He did not take part in the trial and nothing was addressed to the Court by Counsel on his behalf. I can find no evidence whatever as to the first defendant being his servant or agent as alleged in the plaints. The claim in both actions as against the second defendant is therefore dismissed with costs.

In both actions I consider that damage under sections 3 and 5 of the Fatal Accidents Enactment is recoverable under the general prayer for relief in the plaints.

In *Hiern v. Mill*[1] the Lord Chancellor said :—

"As to that the rule is, that, if the bill contains charges, putting facts in issue, that are material, the plaintiff is entitled to the relief, which those facts will sustain, under the general prayer (**Wilkinson v. Beal**, 4 Madd. 408; 2 Madd. Prin. 171); but he cannot desert specific relief prayed; and under the general prayer ask specific relief of another description, unless the facts and circumstances, charged by the bill, will consistently with the rules of the Court maintain that relief."

This was followed in *Cockerel v. Dickens*[2] and *Jervis v. Berridge*[3] and in *London, Chatham and Dover Railway Company v. South Eastern Railway Company*[4] Kay L.J., says at p. 152 :—

"If the case were one in which justice required that such damages should be given, the Court would not be prevented, under our present system, by any technical difficulty from doing justice."

Section 597 of the Civil Procedure Code refers to the inherent powers of the Court.

In the case of the plaintiff in Civil Suit No. 3 of 1955 she is suing in her capacity as widow, although she is also described as administratrix. She could, of course, have sued in either capacity.

In Civil Suit No. 4 of 1955 the plaintiff is suing as the administrator of the estate of Liew Kim Kee (decd.); this is quite clear from paragraphs 1 and 6 of the plaint. He would be unable to sue in any other capacity. It is true that in Suit No. 4 of 1955 the title to the plaint does not state in what capacity the plaintiff sues, but section 42 (iii) of the Civil Procedure Code does not call upon any plaintiff suing in a representative capacity to do any more than what the present plaintiff has done. In his evidence he produced his Letters of Administration.

In Suit No. 3 of 1955 the plaintiff claims that her deceased husband, aged 51 (as alleged in the plaint) was earning an average of $350 p.m. He left six children all of whom were dependent or partially dependent on him at the time of his death. They are :—

1. Cheong Yun Thong — born on 16th December, 1934.
2. Cheong Yian Fatt — born on 2nd June, 1940.
3. Cheong Lai Kuen (f) — born on 3rd April, 1942.
4. Cheong Yan Kwong — born on 19th March, 1950.
5. Cheong Yan Weng — born on 30th August, 1951.
6. Cheong Lai Kheng (f) — born on 16th March, 1954.

In *Davies v. Powell Duffryn Associated Collieries, Ltd.*[5] Lord Wright in assessing damages under the Fatal Accidents Acts, which are similar to the Enactment under which this claim is made, said :—

"It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties: for instance, that the widow might have again married and thus cease to be dependent, and other like matters of speculation and doubt."

A broker is a somewhat hazardous occupation and I consider that if I take the figure of $250 p.m. as being the amount the deceased gave the plaintiff (in Suit 3 of 1955) for household expenses, I am not being ungenerous, but of this sum I deduct $50 for the deceased's own contribution to the household expenses. Now $200 p.m. is $2,400 per year and I consider that to reach a lump sum (taking into consideration the uncertainties of life) nine years' purchase would be a fair method of arriving at the total figure of $21,600 which I apportion as follows :—

1.	Plaintiff widow	$10,000
2.	Cheong Yun Thong, aged 19	500
3.	Cheong Yian Fatt, aged 14	1,600
4.	Cheong Lai Kuen (f) aged 12	2,200
5.	Cheong Yan Kwong, aged 4	2,800
6.	Cheong Yan Weng, aged 3	3,000
7.	Cheong Lai Kheng (f), aged 2 months ...	1,500
		$21,600

In Civil Suits Nos. 3 of 1955 and 4 of 1955 I allow under special damages costs of L/A — $350 — but the funeral expenses I do not think are recoverable in these actions.

In Civil Suit No. 4 of 1955 I allow the sum of $500 as general damage on behalf of Liew Kow Mooi (f), born on 27th February, 1934, and aged 19 at the date of the death of her father. I consider that such sum would probably be the amount of dowry her father would have given her on her marriage, when in due course she married.

There will, therefore, be judgment against the first defendant for the plaintiff in :—

(a) Civil Suit No. 3 of 1955 for $21,950 made up as follows:

Special damage	$ 350
General damage as stated above ...	21,600
	$21,950

and costs of this suit;

(b) Civil Suit No. 4 of 1955 for $850 made up as follows:

Special damage	$350
General damage	500
	$850

and costs of this suit.

Order accordingly.

Solicitors: *Chong Thutt Pitt & Co.; Battenberg & Talma.*